

AMENDED IN SENATE MAY 19, 1997

AMENDED IN SENATE MAY 7, 1997

SENATE BILL

No. 564

Introduced by Senator Solis

February 24, 1997

An act to amend ~~Sections 3021 and~~ *Section* 6323 of the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 564, as amended, Solis. Domestic violence: visitation.

Existing law states that nonparent parties may not seek a determination of custody or visitation rights in a proceeding under the Domestic Violence Prevention Act. Existing law, however, excludes, among others, an alleged or presumed parent, foster parent, or step parent from its definition of "nonparent."

~~This bill would delete an alleged or presumed parent, foster parent, or step parent from the exclusion from the term "nonparent."~~

Existing law authorizes a court to issue an *ex parte* order determining the *temporary custody of a minor child on the conditions the court determines*. Existing law also authorizes a court to issue an *ex parte* order determining the right of a party to visit a minor child on the conditions the court determines in specified proceedings, including a proceeding commenced under the Domestic Violence Prevention Act in a case where there is a marital relationship between the parties.

This bill would *require, rather than authorize, the court to issue those orders.* The bill would also delete the provision authorizing such an order where there is a marital relationship between the parties and instead provide that the authorization for an order under the Domestic Violence Prevention Act is subject to the above-described provision prohibiting the granting of custody or visitation rights to nonparent parties.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3021 of the Family Code is~~
 2 ~~amended to read:~~
 3 ~~3021. This part applies in any of the following:~~
 4 ~~(a) A proceeding for dissolution of marriage.~~
 5 ~~(b) A proceeding for nullity of marriage.~~
 6 ~~(c) A proceeding for legal separation of the parties.~~
 7 ~~(d) An action for exclusive custody pursuant to Section~~
 8 ~~3120.~~
 9 ~~(e) A proceeding to determine custody or visitation in~~
 10 ~~a proceeding pursuant to the Domestic Violence~~
 11 ~~Prevention Act (Division 10 (commencing with Section~~
 12 ~~6200).~~
 13 ~~Nothing in this subdivision shall be construed to~~
 14 ~~authorize custody or visitation rights to be granted to any~~
 15 ~~nonparent party to a Domestic Violence Prevention Act~~
 16 ~~proceeding. As used in this section, "nonparent" does not~~
 17 ~~include a biological parent, adoptive parent, or pending~~
 18 ~~adoptive parent. By amending this subdivision during the~~
 19 ~~1995-96 Regular Session, it is the intent of the Legislature~~
 20 ~~to restate existing law, and to clarify that nonparent~~
 21 ~~parties may not seek a determination of custody or~~
 22 ~~visitation rights through a Domestic Violence Prevention~~
 23 ~~Act proceeding, but only through a proceeding for~~
 24 ~~dissolution or legal separation, or an action to determine~~
 25 ~~paternity in accordance with the Uniform Parentage Act~~
 26 ~~(Part 3 (commencing with Section 7600) of Division 12),~~
 27 ~~or a petition for guardianship.~~



1 ~~(f) A proceeding to determine custody or visitation in~~
2 ~~an action pursuant to the Uniform Parentage Act (Part 3~~
3 ~~(commencing with Section 7600) of Division 12).~~

4 ~~SEC. 2.—~~

5 *SECTION 1.* Section 6323 of the Family Code is
6 amended to read:

7 6323. (a) Subject to Section 3064:

8 (1) The court ~~may~~ *shall* issue an ex parte order
9 determining the temporary custody of a minor child on
10 the conditions the court determines.

11 (2) The court ~~may~~ *shall* issue an ex parte order
12 determining the right of a party to visit a minor child on
13 the conditions the court determines in a proceeding for
14 dissolution of marriage, nullity of marriage, or legal
15 separation of the parties, in an action under the Uniform
16 Parentage Act (Part 3 (commencing with Section 7600)
17 of Division 12), or in a proceeding commenced under this
18 division except as limited by subdivision (e) of Section
19 3021.

20 (b) When making any order for custody or visitation
21 pursuant to this section, the court's order shall specify the
22 time, day, place, and manner of transfer of the child for
23 custody or visitation to limit the child's exposure to
24 potential domestic conflict or violence and to ensure the
25 safety of all family members. Where the court finds a
26 party is staying in a place designated as a shelter for
27 victims of domestic violence or other confidential
28 location, the court's order for time, day, place, and
29 manner of transfer of the child for custody or visitation
30 shall be designed to prevent disclosure of the location of
31 the shelter or other confidential location.

32 (c) When making an order for custody or visitation
33 pursuant to this section, the court shall consider whether
34 the best interest of the child, based upon the
35 circumstances of the case, requires that any visitation or
36 custody arrangement shall be limited to situations in
37 which a third person, specified by the court, is present, or



1 whether visitation or custody shall be suspended or
2 denied.

O

